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EXAMINER

TRAN, THUY VAN

ART UNIT PAPER NUMBER

3652

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/497,359
Filing Date: February 03, 2000
Appellant(s): ADIFON ET AL.

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MAR 22 2005

GROUP 3600

Sean W. O'Brien
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 17, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

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A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

(a) Whether claims 1, 14 and 17 are obvious under § 103 over Miller et al. in view of Rodosta.

(b) Whether claim 11 is obvious under § 103 over Miller et al. in view of Rodosta.

Issues (a) and (c) are grouped together because appellants did not argue separately.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the appellants repeat the same argument for respective claims 14 and 17 as in claim 1.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

| | | |
|-----------|---------------|--------|
| 5,899,300 | Miller et al. | 5-1999 |
| 3,395,777 | Rodosta | 8-1968 |

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. 5,899,300 in view of Rodosta 3,395,777.

Miller et al. '300 disclose an elevator system having an elevator assembly (car 12) disposed within a hoistway (column 2, line 44) and suspended by elevator ropes (24) having ends suspended with respect to a pair of rigid structures (32, 64) affixed to opposing walls (not shown, see column 4, lines 4-5) of the hoistway.

Rodosta '777 discloses an elevator system (Figures 1 & 4) comprising an elevator assembly (ramps 41, 42) suspended by elevator ropes (46, 47) having ends suspended with respect to a pair of rigid structures (13, 15), a compression member (19, Fig. 4) positioned between the rigid structures (13, 15) to counter resultant forces applied to the rigid structures (13, 15) due to loads on the elevator assembly (41, 42).

It would have been obvious to one having ordinary skill in the static structure art at the time the invention was made to have positioned a compression member between the pair of rigid structures of Miller's elevator system as taught by Rodosta to prevent the rigid structures from bending due to non-vertical load.

(11) Response to Argument

(a) Whether claim 1 is obvious under §103 over Miller et al. in view of Rodosta.

With respect to Appellants' arguments on page 4, lines 12-14, Appellants argue that Miller et al. does not show how or where the second dead-end hitch is affixed. Column 2, lines 60-63 and Figure 1 describe and show how and where the elevator assembly is suspended by the ropes arrangement. Moreover, the appealed claim does not require how and where the ropes are affixed.

With respect to Appellants' arguments on page 4, lines 15-20, Appellants argue that there is no reason to include a compression member for Miller's vertical beams since Miller reference does not recognize the possibility of bending due to non-vertical loads. Appellants' arguments are not commensurate with the appeal claims merely name a compression member, not a compression member to encounter compression/tension forces. Moreover, as broadly claimed, member (62) in Miller reference might be interpreted as a compression member positioned

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between the rigid structures (32, 64) to counter forces applied to the rigid structures (32, 64) due to vertical load. Further, it is noted that the features upon which appellants' relies (i.e., any non-vertical load) are not recited in the appealed claim(s). Appellants' arguments are not commensurate with the scope of the claims. Specifically claim 1 does not require non-vertical load.

With respect to Appellants' arguments on page 5, lines 1-15. Appellants argue "whatever extent non-vertical loading might have been a consideration, there is no recognition in the Miller et al. of the possibility of bending due to vertical load". Appellants' arguments are not commensurate with the scope of the claims. Specifically, claim 1 merely recites "a compression member", not a compression member to encounter any non-vertical loads.

With respect to Appellants' arguments on page 5, lines 16-25, Appellants' argument that there is no similar arrangement between Rodosta and Miller et al. references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one ordinary skill in the static structure art would have recognized that positioning a compression member, as disclosed by Rodosta, between the pair of rigid structures of Miller's elevator system would prevent the structures from bending inward due to non-vertical load. Moreover, the Examiner only relies on the teaching of using a compression member (18, 19) of Rodosta reference to encounter any potential non-vertical loads, not bodily incorporated.

With respect to Appellants' arguments on page 5, lines 26-30, Appellants' argue that "there would have been no objective reason to believe a compression member would be needed in the arrangement of Miller et al., to prevent bending due to non-vertical loading, and nothing in Rodosta would suggest that the tie rods be used in such a manner", the references are evaluated by what they suggest to one skill in the art, rather than by their specific disclosures. In this case, the "compression member (18, 19)" as disclosed by Rodosta is placed between the pair of rigid

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structures of Miller et al. to prevent the rigid structures from bending inward due to non-vertical load.

With respect to Appellants' arguments on page 6, lines 1-7, Appellants' argue that "the lack of any recognition in the Miller et al. that bending due to non-vertical loading would have been concern. Therefore, there would have been no objective motivation to combine the cited documents as asserted". The claim would be rejected under 35 U.S.C § 102 (b), not §103(a) had Miller et al concerned about the non-vertical load.

With respect to Appellants' arguments on page 6, lines 8-16, Appellants' argue that both Miller and Rodosta fail to disclose or suggest that the ends of the elevator ropes are suspended with respect to a pair of rigid structure that are affixed to opposing walls of the hoistway. Figure 1 of Miller clearly shows ropes 24 having ends suspended with respect to the pair of guide rails.

With respect to Appellants' arguments on page 6, lines 17-22, Appellants' argue that "it would not be appropriate to assume that the dead end hitch 44 is affixed to a wall of the hoistway". The hitch does not have to be fixed to the wall of the hoistway, only the rigid structures which are guide rails. See column 2, lines 43-44 and column 4, lines 4-6.

With respect to Appellants' arguments on page 6, line 23 to page 7, line 4, Appellants' argue that Miller et al. and Rodosta fail to disclose or suggest the elevator ropes having ends suspended with respect to a pair of rigid structures between which a compression member is positioned. It is recognized that the elevator car of Miller being suspended by ropes 24, and vertically movable between a pair of rigid structures (guide rails). One ordinary skill in the art would have recognized that there are some non-vertical tension loads caused by the center gravity of the elevator car that is suspended by ropes on both sides of the elevator car relative to the rigid structures. Thus, it would have been obvious to place a compression member between the rigid structures in order to encounter non-vertical forces.

(b) Whether claim 11 is obvious under §103 over Miller et al. in view of Rodosta.

With respect to Appellants' arguments on page 7, lines 11-23, since Appellants repeat the same arguments as to claim 1, please see the examiner' answer in section (a) above.

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With respect to Appellants' arguments on page 7, line 24 to page 8, line 6, Appellants argue that there would have been no suggestion to position a compression member between points on the rigid structure from which the elevator assembly is suspended. However, claim 11 only recites "positioning said compression member between points on said structures from which said elevator assembly is suspended". In other words, the claimed limitation only further defines the rigid structures as where the elevator assembly is suspended.

(c) Whether claims 14 and 17 are obvious under §103 over Miller et al. in view of Rodosta.

Since Appellants repeat the same arguments as to claim 1, please see the examiner's answer in section (a) above.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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July 12, 2004

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